

2023 AIRLINE LABOR & EMPLOYMENT LAW SYMPOSIUM



Foreign Pilot Hiring Update

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SEPTEMBER 21 AND SEPTEMBER 22, 2023 | ST. ANTHONY HOTEL | SAN ANTONIO, TX

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What We'll Cover Today

- 18 months later...how is visa sponsorship going?
- Work Visa Options: E-3, H-1B1, Green Cards: What are they?
- Key Considerations in Building a Foreign Pilot Sponsorship Program
- Common Challenges in Foreign Pilot Hiring
- Compliance Obligations
- Regulatory and legislative changes to immigration rules that would help the airline industry

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Objectives

- Learning how visa sponsorship for foreign pilots is an effective strategy to supplement pilot hiring.
- Recognizing key considerations and challenges in building a foreign pilot visa sponsorship program for your airline.
- Understanding compliance obligations for a foreign sponsorship program.
- Understanding regulatory and legislative changes to immigration rules that would help the airline industry.



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RAA Testifies at Congressional Hearing

April 19, 2023

RAA Testifies at Congressional Hearing; Urges Immediate Action to Resolve Pilot Shortage and Improve Training

"The regional airline industry, like most of the airline industry, has experienced workforce challenges. Most acute among these challenges is a severe and ongoing pilot shortage."

"The pilot shortage has resulted in a collapse in air service." - Faye Malarkey Black, President and CEO of the Regional Airline Association, testifying at a House Transportation and Infrastructure subcommittee hearing

Impacts of Pilot Shortage:

- More than 500 regional aircraft are parked, and those aircraft remaining in service are underutilized. This impacts 308 airports or 72 % of all U.S. airports.
- These airports have lost 25% of their flights, with smaller airports experiencing a disproportionate impact.
- This is happening despite industry self-help measures, including dramatic compensation increases and enhancing partnerships and pathways with training providers and larger carriers.



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Work Visa Options:

1. E-3
2. H-1B1
3. Green Cards

What are they and what are the key considerations?



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Temporary Work Visas: E-3



E-3 Visa for Australian Professionals

- Only available to Australian citizens.
- Requires a DOL-certified Labor Condition Application (LCA) approved for up to two years.
- A single LCA can be “multi-slot” and used to support multiple E-3 pilot applications with the same offered job in the same location, for the same period of approval.
- E-3 Visas are valid for two years and can be renewed indefinitely.
- Family of E-3 worker get E-3D visas. Spouses can work for any employer upon entry to the U.S. Children can go to school.
- E-3 visas are available year-round; we’ve never reached the cap.
- Pilot must have the equivalent of a bachelor’s degree in a related field based upon education, work experience, or a combo.
- Pilot must possess licensure or credentials required to fly as a pilot in the U.S., or be eligible to obtain them within a reasonable period upon entry.
- Currently takes 4-8 weeks from intake until the pilot can come to the U.S. with visa in hand.



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Temporary Work Visas: H-1B1

H-1B1 Visa for Chilean or Singaporean Professionals



- Only for Chilean and Singaporean citizens.
- Requires a certified LCA.
- A single LCA can be “multi-slot” and used by multiple H-1B1 pilots with the same offered job in the same location, for the same period of approval.
- H-1B1 Visas are valid for 18 months and can be renewed indefinitely.
- Available year-round; U.S. has never reached the annual cap.
- Family members get one year H-4 visa. There is no work authorization for H-4 spouses.
- Currently takes 4-8 weeks from intake until the pilot can come to the U.S. with visa in hand.



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E-3 vs. H-1B1

	E-3	H-1B1
PROCESSING TIMELINE	<p>Consulate: 4-8 weeks from case initiation</p> <p>USCIS: 2 months vs. 15 days under premium processing (longer if RFE)</p>	<p>Consulate: 4-8 weeks from case initiation (consular process)</p> <p>USCIS: 2 months vs. 15 days under premium processing (longer if RFE)</p>
COSTS	<p>Consulate: \$315 MRV fee + credential eval (if needed)</p> <p>USCIS: \$2,460 filing fees + 2,500 optional premium processing (guarantees response within 15 days)</p>	<p>Consulate: \$185 MRV Fee + credential eval (if needed)</p> <p>USCIS: \$2,460 filing fees + 2,500 optional premium processing (guarantees response within 15 days)</p>
VISA DURATION (Pilot)	2 years, indefinitely renewable	18 months, indefinitely renewable
VISA DURATION (Family)	2 years (E-3D visa), indefinitely renewable	12-18 months (H-4 visa), indefinitely renewable
SSN	<ul style="list-style-type: none"> - Yes for E-3 Pilot - Yes for E-3 Spouse (must be admitted as “E-3S” stamped on entry) - No for E-3D child 	<ul style="list-style-type: none"> - Yes for H-1B1 Pilot - No for H-4 Spouse unless pilot is sponsored for green card - No for H-4 child
DRIVER LICENSE	Yes, Pilot and Spouse	Yes, Pilot and Spouse



Permanent Residence (“Green Card”)

Standard Green Card (EB-2/EB-3)

- Open to any nationality, but people born in India and China are subject to a long backlog.
- Employer must conduct a labor market test proving Americans are unavailable for the job (“Labor Certification”).
- One labor certification process can be used for multiple individual I-140 petitions.
- May take about 24 months from requesting Prevailing Wage Determination to the pilot entering the U.S. with a green card.



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Permanent Residence (Green Card)

Fast-Track EB-2 for Exceptional Ability or National Interest Waiver

- Reserved for most experienced or accomplished pilots with more than 10 years of experience or whose work will benefit the national interest beyond their employment with the airline.
- Open to any nationality.
- No labor market test.
- Shortens green card process by nearly 6-12 months.



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Key Considerations in Building a Foreign Pilot Visa Sponsorship Program for Your Airline



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Key Considerations in Building a Foreign Pilot Visa Sponsorship Program

- Recruiting
- Onboarding
- Pilot union
- Planning for visa renewals
- Retention
- Families

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Common Challenges in Foreign Pilot Hiring



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Common Challenges in Foreign Pilot Hiring

- SSN delays if pilot applies immediately after entry.
 - Wait at least 7-10 days after arrival to apply for SSN. Pilot can be paid while the SSN is in process
- CBP admits the pilots under the wrong classification at admission.
 - Request correction through CBP Deferred Inspection post-entry
- Pilot must be legally married for spouse to get a spouse visa; common law marriage not enough.
- Periodically, lengthy wait times for consular visa appointments.
 - Consider applying at a third country consulate with shorter wait times or using mail-in visa renewal option
- Monitoring and ensuring pilot maintains legal status → Tracking database.
- Long wait times if family applies for visas independently of the pilot → Apply for visas together.



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Compliance Obligations



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Employer's DOL Obligations Under the LCA

- Pay the "required wage rate" for the position.
- Attest that hiring the foreign pilot will not adversely affect the working conditions of other employees.
- Attest that there is no strike, lockout, or work stoppage occurring as part of a labor dispute affecting employees in the foreign pilot's job category.
- Provide notice to either the union representative (if applicable) or to similar employees within the same job category about the airline's filing of the LCA to sponsor a foreign pilot.
- Recordkeeping: Maintain Public Access File and DOL Access Files for one year beyond the LCA expiration date.



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Regulatory and Legislative Changes to Immigration Rules would Help the Airline Industry



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Regulatory and Legislative Changes to Immigration Rules

- 8.31.2022: H.R.8761 U.S. Congressman Richard E. Neal (D-MA-01), Chair of the House Committee on Ways and Means and Congressman Mike Kelly (R-PA-16) introduced bipartisan bill to add Irish citizens to E-3 visa program.
- DOL should add pilots to the list of "Schedule A" shortage occupations under 20 CFR 656.5 <https://www.ecfr.gov/current/title-20/chapter-V/part-656/subpart-B/section-656.5> to allow for fast-track green cards for pilots.
- The Biden Administration can amend the United States Mexico Canada Agreement (USMCA f/k/a NAFTA) to add "pilot" to the list of qualifying TN jobs for Mexican and Canadian citizens.
- Congress can develop legislation to establish a new temporary work visa for pilots specifically, or use an existing category to authorize an emergency work permit for pilots.
- Congress and DHS should exempt airlines from the annual H-1B lottery by designating them as a "cap-exempt petitioner."



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Questions?

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